HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

and

HON'BLE SRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION NO : 1899 of 2006

Between:

M/s. S.J.B.Tubes Ltd. rep by its

Managing Director Mr.K.Bharath Veer

..... Petitioner

AND

Appellate Authority for Industrial & Financial

Reconstruction, Jeevan Prakash Buildings,

25, Kasturiba Gandhi Marg, New Delhi and 4 others

.....RESPONDENTS

::JUDGMENT::

Counsel for the Petitioner : Sri V.Kishore

Counsel for Respondent Nos. 1 & 5 : Sri Deepak Bhattacharjee

Counsel for Respondent No.2 to 4 : Sri A.Rajasekhar Reddy

Additional Solicitor General

Dated 3..2..2006

Per Shri G.S. Sighvi, CJ

This petition is directed against order dated 12.8.2005 passed by the Appellate Authority for Industrial and Financial Reconstruction (for short 'AAIFR'), whereby the appeal filed by the petitioner against the decision of the Board for Industrial and Financial Reconstruction (for short 'BIFR') was dismissed as barred by time.

The petitioner is a company registered under the Companies Act, 1956. It set up an industrial unit for manufacturing Mild Steel and Galvanished Iron (GI) Tubes. On 17.8.1998, the Board of Directors of the petitioner submitted an application to the BIFR for declaring the company as a sick industrial company. By an order dated 7.1.1999, the BIFR declared the petitioner as a sick industrial company and

appointed Industrial Development Bank of India (for short 'IDBI') as Operating Agency. After making serious efforts for exploring the possibility of revival of the petitioner, the Operating Agency submitted report to the BIFR that there was no possibility for revival because the Company had failed to come forward with any concrete proposal. The matter was then considered in the meeting of the BIFR held on 25.5.2002 and it was decided to recommend for winding up of the company. Accordingly, a reference was made to the High Court of Andhra Pradesh under Section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'the 1985 Act').

After almost one year and three months of the decision of the BIFR, the petitioner preferred an appeal before the AAIFR, which was dismissed as barred by time on the ground that the same had been filed after expiry of the limitation of 60 days.

Learned counsel for the petitioner argued that the reason assigned by the AAIFR for refusing to entertain the appeal filed by the petitioner is legally unsustainable. According to him, the period of limitation would be deemed to commence from the date on which the petitioner acquired the knowledge about the order passed by the BIFR and as the petitioner-company came to know of the decision of the BIFR only in 2003, the appeal was filed in that year and, therefore, the same could not have been treated as time barred.

In our opinion, there is no merit in the contention of the learned counsel for the petitioner and the writ petition is liable to be dismissed summarily. Paragraphs 2 to 5 of the order dated 25.9.2002 passed by the BIFR, which contain detailed reasons for passing the order of winding up read as under:

> "2. The representative of IDBI (OA), Shri J. Gauro stated that no response had been received by them from the company after the show cause notice (scn) had been issued to the company vide BIFR order dated 21.6.2002. He also informed that they had not received any other objection from the company or from anyone lese in this regard. He stated that in the last week, in Mumbai, the IDBI personnel had talked to the M.D. of the company telephonically and the M.D. stated that he had no funds to rehabilitate the company. He also informed that he was still trying to bring some co-promoter for the induction of funds. On being asked whether IDBI had made any communication to the company, he stated that he had not done so.
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> 3. The representative of Commercial Tax Officer (CTO), Mr. Yaseem Ahmed stated that the company was closed without giving intimation to

them. He also stated that the company was filing nil return and had not returned the registration certificate given by the CTO to them. He stated that they had already issued attachment order against the company but no criminal action had been filed.

4. After hearing the submissions and the material on record, the Board noted that the O.A had submitted that no response had come from the company after the SCN was issued to them on 21.6.2002. It was also noted that the communications sent from BIFR to the company's registered office i.e. D.No.5-9-22/1/4/F, Second Floor, Damayanth Chambers, Opposite New MLA Quarters, Adarsh Nagar, Hyderabad-500463 and the factory address i.e. Survey No.150 and 163, Bontanpally village, Maharajpet, Shankarpally Mandal, Rangareddy District, Andhra Pradesh, had been returned back with the remarks 'addressee left'. It was, therefore noted that the due notice had been sent to the company to submit their observations as per the law and public notice was also issued in two newspapers one in English and one in vernacular where the company's registered office was located, but despite the same, neither any Director nor any authorized representative was present to putforth their views which gave the indication that the company was present to putforth their views which gave the indication that the company was not interested in its rehabilitation as the last opportunity given to them to submit their views had also not been utilized by them.

5. The Board also noted that the OA had made the submissions that they had contacted the party telephonically a week back and the party had informed them that they had no funds for the rehabilitation. The Board, therefore, came to the conclusion that, on consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, the sick industrial company was not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company viz., SJB Tubes Ltd. as a result thereof was not likely to become viable in future and that it was just, equitable and in public interest that the company should be wound up u/s 20(1) of the Act. Accordingly, the Board confirmed its earlier prima facie opinion formed vide order dated 21.5.2002 to wind up the company. The Board directed that this opinion along with earlier orders/proceedings in the case be forwarded to the concerned High Court for further necessary action as per law."

On a reading of the above reproduced extracts of the order passed by the BIFR it becomes clear that the Operating Agency had issued more than one notices to the petitioner to explore the possibility of its revival but the latter did not cooperate. The

notice was also published in two newspapers but the petitioner did not give any response. After receipt of report of the Operating Agency, the BIFR issued notice to the company at its registered address, but the petitioner did not bother to appear before the BIFR leaving the latter with no option but to approve the recommendation made by the Operating Agency for winding up of the company. Our attention has not been drawn to any provision in the 1985 Act, which ordains the BIFR to indefinitely adjourn the proceedings initiated at the instance of the company. Therefore, the period of limitation for the purpose of filing an appeal will be deemed to have commenced in the petitioner's case on 25.9.2002 and an appeal against the decision of the BIFR could have been filed within next sixty days, which was admittedly not done. Therefore, AAIFR did not commit any illegality by dismissing the appeal as time barred.

No other point has been argued.

For the reasons mentioned above, the Writ Petition is dismissed.

G.S. SINGHVI, CJ

2nd February, 2006

G. BHAVANI PRASAD, J

Msv/vtv